Cargill Incorporated d/b/a Dent's Poultry *and* Southeast Council, Retail, Wholesale & Department Store Union, AFL-CIO, Petitioner. Case 10-RC-12283

March 25, 1982

DECISION AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Pursuant to authority granted it under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objections to an election[1] held on February 13, 1981, and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and hereby affirms the Hearing Officer's findings and recommendations, except insofar as they pertain to Objections 3 and 8.

Objection 3 alleges that the Employer threatened employees with economic reprisals because of their union activities, sympathies, and desires. Both the Employer's and Petitioner's witnesses testified that in early January 1981, the Employer's vice president informed employees that, as of August 15, 1980, they were covered under a pension plan, but that because only nonunion plants were covered under the plan, coverage would be discontinued if the Union was voted in. The Hearing Officer found that the announcement was an attempt to wean employees away from the Union and discriminated between union and nonunion employees. She concluded that it is the type of conduct long found to be violative of Section 8(a)(1) and sustained the objection.

Objection 8 alleges that "the Employer threatened its employees that selection of Petitioner as their bargaining representative would prevent any employee from taking up his or her grievance or problem directly with management." Two witnesses for Petitioner testified that at a mass meeting, General Manager Jimmy Dent stated that if the Union was voted in, the employees could not come to the Company with their grievances, but would have to go through the union steward or representative who would then be responsible for going to the Company. This testimony was corroborated by Dent, and the Hearing Officer found this statement also to be the type of conduct violative of Section 8(a)(1), and sustained the objection.

We agree with the Hearing Officer that the above conduct is objectionable, but we do not agree with her conclusion that it is not sufficiently objectionable "to warrant a finding that the election be set aside," or with her supporting rationale. We find it unnecessary to determine in this proceeding the unfair labor practice nature of that conduct or its relationship to Section 8(a)(1) of the Act. Further, we disagree with her conclusions that the conduct, though objectionable, is so remote and neither ". . . so severe or threatening to be deemed coercive . . ." nor " . . . of such magnitude as to have had a serious impact upon the employees' freedom of choice." Although the conduct occurred at the beginning of Petitioner's campaign, there is no evidence that the Employer retracted those statements during the course of the campaign or in any way led the employees to believe that the Employer would not do what it threatened to do in the event of a union victory. The Board has found that such conduct constitutes improper, objectionable threats to withdraw unilaterally existing benefits, and sufficiently interferes with employees' freedom of choice to warrant setting aside the election. *Associated Roofing & Sheet Metal Co., Inc.*, 255 NLRB 1349 (1981); *Propellex Corporation, a subsidiary of Essex Cryogenics Industries, Inc.*, 254 NLRB 839 (1981). Accordingly, we shall direct that the election be set aside and a second election be conducted.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 44 for, and 80 against, Petitioner; there were 4 challenged ballots, a number insufficient to affect the results.